Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1480

ROBERT C. BANNERT,

Petitioner,

v.

AMERICAN CAN COMPANY,

Respondent.

BRIEF OF RESPONDENT AMERICAN CAN COMPANY IN OPPOSITION TO MOTION FOR LEAVE TO FILE AN AMENDED PETITION FOR CERTIORARI

LESLIE W. FLEMING,
BUTZEL, LONG, GUST, KLEIN & VAN ZILE,
Attorneys for Respondent
American Can Company
1881 First National Building
Detroit, Michigan 48226

Of Counsel:

EDWARD N. SHERRY,
DEWEY, BALLANTINE, BUSHBY,
PALMER & WOOD,
140 Broadway
New York, New York 10005

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Respondent American Can Company ("American Can") respectfully submits this Brief in opposition to the Motion for Leave to File an Amended Petition for Certiorari ("Motion") filed by Petitioner Robert C. Bannert ("Bannert").

ARGUMENT

I.

The Decision of the Michigan Supreme Court in *Woodward v. Cadillac Overall Supply Co.* is Consistent with the Decision of the United States Court of Appeals in this Case.

Bannert contends in his Motion that the "decision of the Michigan Supreme Court is inconsistent with the decision of the United States Court of Appeals on the controlling issue of Michigan law in this case." (Motion, p. 1) Ban-

nert further contends that the Michigan Supreme Court in *Woodward* "reject[s] the position of the United States Court of Appeals in this case which *held* that the forfeiture of the retirement benefits of a voluntary retiree is reasonable as a matter of law." (Motion, pp. 2-3) Both contentions are incorrect. The United States Court of Appeals found that two decisions by the Michigan Court of Appeals "lead us to conclude that the Michigan courts would not find forfeiture unconscionable or unreasonable here." (Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit, p. 36) In *Woodward,* the Michigan Supreme Court held that the same two decisions relied upon by the United States Court of Appeals correctly state Michigan law. (Petitioner's Reply and Supplemental Brief, pp. 10-11) The decision of the Michigan Supreme Court in *Woodward,* therefore, is not inconsistent with and does not reject the decision of the Court of Appeals for the Sixth Circuit; instead, the Michigan Supreme Court relied upon the same authority relied upon by the United States Court of Appeals in stating current Michigan law. Michigan law permits the forfeiture of pension benefits where an employee voluntarily engages in competitive employment in violation of a clause providing for such a forfeiture. Both the United States Court of Appeals for the Sixth Circuit and the Michigan Supreme Court have recently so held, and Bannert has produced no Michigan decision to the contrary.

II.

The Decision of the United States Court of Appeals Should Not be Reversed.

Bannert earlier contended that the United States Court of Appeals should have stayed its hand pending the decision of the Michigan Supreme Court in *Woodward.* (Petition for Writ of Certiorari to the United States Court of

Appeals for the Sixth Circuit, p. 9) Following the decision of the Michigan Supreme Court in that case adverse to his expectation, Bannert now contends that this Court should reverse the United States Court of Appeals because that court's decision is inconsistent with the decision of the Michigan Supreme Court. But Bannert has failed both to identify any such inconsistency and to establish that *Woodward* has any impact upon his own case. Moreover, Bannert has failed to advance any authority for the proposition that the decision of the United States Court of Appeals to proceed was incorrect. Because the Court of Appeals need not have stayed its hand and because *Woodward* is not inconsistent with its decision, this Court should not reverse the decision of the United States Court of Appeals.

Conclusion

The Motion for Leave to File an Amended Petition for Certiorari should be denied. Furthermore, this cause should not be reviewed by this Court and the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

LESLIE W. FLEMING,
BUTZEL, LONG, GUST, KLEIN & VAN ZILE,
Attorneys for Respondent
American Can Company
1881 First National Building
Detroit, Michigan 48226

Of Counsel:
EDWARD N. SHERRY,
DEWEY, BALLANTINE, BUSHBY,
PALMER & WOOD,
140 Broadway
New York, New York 10005